

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish
Policies and Cost Recovery Mechanisms for
Generation Procurement and Renewable
Resource Development.

Rulemaking 01-10-024
(Filed October 25, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING NOTICES OF INTENT TO CLAIM COMPENSATION**

I. Summary

This ruling responds to notices of intent (NOIs) to claim compensation filed by Aglet Consumer Alliance (Aglet), Consumers Union (CU), The Natural Resources Defense Council (NRDC), and The Utility Reform Network (TURN). In consultation with the assigned Commissioner, I find that Aglet, CU, NRDC, and TURN are eligible for compensation in this proceeding.

The findings of eligibility for compensation made in this ruling do not guarantee an award of compensation. Before a party can be awarded reasonable fees and costs of participation, it must show it (a) made a substantial contribution to the adoption, in whole or in part, of the commission's order or decision and (b) participation or intervention without an award of fees or costs imposes a significant financial hardship. Parties should make an effort to see they do not duplicate other parties' efforts by taking the same approach to the same issues. Duplication may result in a reduction in the amount of compensation ultimately awarded.

II. NOI Requirements

This ruling addresses these NOIs under the requirements of the Public Utilities Code, Division 1, Part 1, Chapter 9, Article 5, Sections 1081-1804 and our rules for the Intervenor Compensation Program set forth in Decision (D.) 98-04-059.¹

A. Timely Filing

Under Section 1804(a)(1), “(a) customer who intends to seek an award under this article shall, within 30 days after the prehearing conference is held, file and serve on all parties to the proceeding a notice of intent to claim compensation.” The prehearing conference was held January 8, 2002. NOIs were timely filed by Aglet and TURN on February 5, 2002 and by NRDC on February 7, 2002.

CU filed its NOI on April 9, 2002 with a request for permission to file its notice late due to the change in procedural schedule and broader scope provided by the Assigned Commissioner’s April 2, 2002 scoping memo. Rule 76.74(b) of the Commission’s Rules of Practice and Procedure provides that the administrative law judge may specify a different procedure for accepting NOIs when new issues have emerged after the time set for filing. I find good cause is shown for CU’s late filing and it should be accepted.

B. Customer Status

Pursuant to D.98-04-059, this ruling must determine whether the intervenor is a customer, as defined in Section 1802(b), and specify under which of three categories the intervenor qualifies as a customer: a participant

¹ All statutory references are to the Public Utilities Code.

representing consumers; a representative authorized by a customer; or a representative of a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential ratepayers. (See slip op. at 28-29.) In D.98-04-059, the Commission also finds that to be eligible for compensation an intervenor must show that it will represent customer interests that would otherwise be underrepresented. (See Finding of Fact 13, slip op. at 83.)

1. Aglet

Aglet meets the third definition of customer: it is an unincorporated, nonprofit association authorized pursuant to its articles of organization and bylaws to represent and advocate the interests of residential and small commercial customers of electrical, gas, water and telephone utilities in California. A copy of Aglet's articles and bylaws is attached to an NOI filed on June 11, 1999 in Application (A.) 99-03-014.

Aglet states that the Commission's Office of Ratepayer Advocates (ORA) is a party, but ORA does not address the specific interests of small customers. TURN represents residential and small commercial customers and Aglet and TURN have communicated their mutual concerns, and Aglet expects to continue that cooperation.

2. CU

CU states it has a long history since the 1930s of representing the interests of consumers and, in a May 9, 2002 supplement to its filing, provides pages from its bylaws, as amended on October 17, 1992, that authorizes it to "obtain and provide for consumers information and counsel on consumers' goods and services covering quality, price, and labor conditions under which

such goods are produced and distributed.” CU qualifies as a customer under the third definition.

In making a showing that it will represent customer interests that would otherwise be underrepresented, CU states that while it understands that other groups, particularly Aglet and TURN, are representing residential consumers here, it believes that additional representation is warranted given the importance and large long run impact on ratepayers of the results of this proceeding. CU states it is coordinating with the other groups to insure that there is no duplication of analysis and technical work in its testimony.

3. NRDC

NRDC meets the definition under 1802(b) of a customer eligible to claim intervenor compensation as it is a formally organized group authorized pursuant to its bylaws (which are attached to its filing) to represent the interests of its members, nearly all of whom are residential customers. NRDC states the interests of its members are to preserve environmental quality while minimizing the societal costs of providing electric service through energy efficiency, renewable resources and other cost effective alternative energy resources. NRDC states it represents customers with a concern for the environment that distinguishes their interests from the interests represented by other consumer advocates who have intervened in this case.

4. TURN

TURN meets the definition under 1802(b) of a customer eligible to claim intervenor compensation as it is a non-profit consumer advocacy organization whose articles of incorporation, submitted in A.98-02-017 and A.99-12-024, specifically authorize its representation of the interests of residential customers. While both Aglet and TURN state they represent the interests of residential and

small commercial classes, TURN asserts that these interests are underrepresented and it will tailor its participation to ensure that its work serves to support and complement the work of other parties that share its positions.

C. Financial Hardship

Only those customers for whom participation or intervention would impose a significant financial hardship may receive intervenor compensation. Section 1804(a)(2)(B) allows the customer to include a showing of significant financial hardship in the NOI and this showing can be made on the merits of the pleading or through a rebuttal presumption. Alternatively, the required showing of significant financial hardship may be made in the request for award of compensation.

Section 1802(g) defines “significant financial hardship”:

Significant financial hardship” means either that the customer cannot afford, without undue hardship, to pay the costs of effective participation, including advocate’s fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.”

Aglet addresses this requirement by stating that the economic interests of the individual members of Aglet are small in comparison to the costs of effective participation. Aglet estimates typical residential electric bills are in the order of \$1,000 annually, which is much less than Aglet’s estimated costs of participation. Aglet asserts that all of its current members are residential customers, and most if not all of the businesses owned by Aglet members are sole proprietorships without employees; further, no business owned by Aglet members is a large commercial or industrial customer that might use great quantities of electricity.

Based on the above assertions, I find Aglet meets the “significant financial hardship” requirement of Section 1802(g).

Section 1804(b)(1) allows an intervenor to meet the significant financial hardship requirement through a rebuttable presumption by showing a finding of significant financial hardship has been made in another proceeding less than one year from the start of this proceeding. Aglet, NRDC, and TURN each make that showing here. Therefore, I find a rebuttal presumption of eligibility exists for Aglet, NRDC, and TURN. If any party attempts to rebut this presumption, the intervenors are granted leave to furnish evidence of significant financial hardship within 10 days of the rebuttal’s filing.

CU states it will provide a showing of significant financial hardship when it requests an award of compensation. This is consistent with the alternative procedure set forth in Section 1804(a)(ii)(B).

D. Planned Participation and Estimated Compensation Request

Section 1804(a)(2)(A)(i) requires the NOI to include a statement of the nature and extent of the customer’s planned participation in the proceeding to the extent this can be predicted and Section 1804(a)(2)(A)(ii) requires the NOI to include an itemized estimate of the compensation the customer expects to receive.

1. Aglet

To date, Aglet has filed opening comments on December 21, 2001, participated in the January 8, 2002 prehearing conference, reviewed utility proposals, and discussed issues with TURN. Depending on the scoping ruling, Aglet expects to address policy issues, procurement risks and rewards, utility creditworthiness, procurement incentives, generation planning responsibilities,

utility conflicts of interest, and procurement portfolio guidelines or standards. Aglet may take up other issues as the proceeding unfolds. Aglet's principal long-term objective is to promote safe, reliable, environmentally responsible utility service at reasonable, nondiscriminatory rates.

Aglet now expects to request compensation in the amount of \$58,180 as shown in the table below:

	<u>Time</u>
\$52,800	240 hours of professional time by James Weil, at \$220 per hour
4,400	40 hours of travel and compensation time, at \$110 per hour
	<u>Other Costs</u>
250	Copies
200	Postage
500	Travel costs
+ 30	FAX charges
\$58,180	Total

Aglet will provide time records, expense records and justification for hourly rates in its request for an award of compensation, if the request for compensation is filed.

2. CU

The specific issues CU intends to address are:

- (a) The open and competitive processes the utilities should use to procure supplies, particularly renewable resources and demand side options, and how the process could be integrated with the programs of the Energy Commission and the Power Authority;
- (b) The construction of reasonable portfolios of supplies;
- (c) Whether there should be mandatory set-asides for renewable resources; and
- (d) How system reliability and the needs of the CalISO can be integrated into the Commission's approved procurement process and cost recovery mechanisms.

CU states it is difficult to estimate potential compensation with certainty since the scope of the proceeding is large, the schedule is tight, and there are many other parties in the proceeding who will be covering issues of concern to CU. CU currently estimates a total budget of \$25,000 comprised of the following components:

- 120 hours of senior policy analyst and expert witness William Ahern at an average hourly rate of \$250 an hour; and
20 hours of senior attorney Gail Hillebrand at an average hourly rate of \$300 an hour.

CU recognizes that any future claim to compensation is dependent upon the final decision in this proceeding. It will address the reasonableness of the hourly rates requested in its request for compensation, if a request is filed.

3. NRDC

NRDC states it intends to participate actively in all phases of this proceeding including presentation of testimony and witnesses, participation in any hearings, and submission of briefs and comments as required.

NRDC states it is difficult to estimate potential compensation with certainty since the scope and schedule ruling had not been issued at the time of its filing. However, NRDC estimates a total budget of \$48,750 comprised of the following components:

NRDC staff, hours and billings rates:

- 250 hours of scientist, Sheryl Carter at an average hourly rate of \$135; and
- 50 hours of attorney, Ralph Cavanagh at an average hourly rate of \$250.

Thus, NRDC's estimate for total staff line is: \$46,250.

NRDC estimates total expenses (postage, copies, travel, etc.) at about \$2,500.

NRDC recognizes the amount of any future claim to compensation is dependent upon the final decision and that it will address the reasonableness of its hourly rates requested in its request for compensation, if a request is filed.

4. TURN

TURN states it expects to pursue discovery, prepare testimony, participate in any hearings that are conducted, and submit briefs and comments as required. Further, it states that the extent of its involvement will necessarily depend on the resources it has available at the time that such involvement is required.

TURN currently estimates a total budget of \$146,000. It estimates it will devote roughly 250 hours of Staff Attorney Matthew Freeman's time to this proceeding (at a proposed hourly rate of \$220), 50 hours of TURN Staff Attorney Bob Finkelstein's time (at a proposed hourly rate of \$340), and 100 hours of TURN Staff Attorney Michel P. Florio's time (at a proposed hourly rate of \$375). TURN will also rely upon JBS Energy Inc. to provide analysis and expert witness support during the investigation. TURN estimates 150 hours of Bill Marcus's time might be devoted to this proceeding (at an hourly rate of \$175) along with 75 hours of Jeff's Nahigian's time (at an hourly rate of \$115). Estimated attorney and witness expenses are \$1,500.

TURN recognizes the amount of any future claim to compensation is dependent upon the Commission's final decision in this case. The reasonableness of the hourly rates requested will be addressed in its request for compensation, if one is filed.

Therefore, **IT IS RULED** that:

1. The notices of intent (NOIs) were timely filed by Aglet Consumer Alliance (Aglet), The Natural Resources Defense Council (NRDC), and The

Utility Reform Network (TURN). Consumers Union (CU) demonstrated good cause for its late filing and it is accepted.

2. Aglet, CU, NRDC, and TURN are customers as that term is defined in Section 1802(b) and each has shown that it is a group or organization that is authorized by its bylaws or articles of incorporation to represent the interest of residential ratepayers.

3. Aglet, NRDC, and TURN have met the eligibility requirements of Section 1804(a), including the requirement to establish significant financial hardship, and all are found eligible for compensation in this proceeding.

4. CU has met the eligibility requirements of Section 1804(a) and states it will make a showing of significant financial hardship when it files its request for compensation. It is found eligible for compensation in this proceeding.

5. A finding of eligibility in no way assures compensation.

6. Aglet, CU, NRDC, and TURN shall make every effort to reduce duplication of contribution.

Dated May 28, 2002, at San Francisco, California.

/s/ CHRISTINE M. WALWYN

Christine M. Walwyn
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Notices of Intent to Claim Compensation on all parties of record in this proceeding or their attorneys of record.

Dated May 28, 2002, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

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